STATE OF MICHIGAN

COURT OF APPEALS

RICHARD A. CARLSON, Plaintiff-Appellee,	UNPUBLISHED September 23, 2004
v	No. 252861 Kent Circuit Court
LAURA LOUISE ABBGY, Defendant-Appellant.	LC No. 97-011656-DM

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

I. Overview

Defendant Laura Louise Abbgy appeals as of right from the order granting physical custody to plaintiff Richard A. Carlson. We affirm.

II. Basic Facts And Procedural History

The parties were married in 1992, had one child in 1995, and divorced in 1998. The judgment of divorce awarded Abbgy physical custody and gave Carlson scheduled parenting time. Beginning in March 1999, Carlson filed several motions to hold Abbgy in contempt for denying him his scheduled parenting time. After a September 27, 2002 hearing on one of these motions, the trial court entered an order scheduling the matter for a three-hour factual hearing.

On December 9, 2002, Carlson moved for change of custody. The custody matter was addressed on December 20, 2002, and on January 28, 2003, the trial court ordered that the case proceed with a factual review, including a psychological evaluation of the child. At a hearing on March 3, 2003, the parties agreed on the record that the custody hearing and contempt hearing, which had still not been held, would be combined. The trial court entered an order stating that "[t]he Factual Hearing for Custody and Contempt shall be combined and shall occur on June 23, 2003 and June 24, 2003 commencing at 9:00 a.m."[1]

[1] This order was not entered until on August 18, 2003, although it stated that it was effective as of March 3, 2003.

The June hearing dates were later rescheduled for August 18 and 19, 2003. In early July, the trial court entered a stipulation allowing Abbgy's counsel to withdraw from representation. On July 29, 2003, Abbgy filed a pro per motion to change parenting time, alleging that Carlson's stepsons had sexually abused the child.

The evidentiary hearing was held on August 18 and 19, 2003. At the outset, the trial court indicated that the matters before it were the custody issue and Abbgy's contempt, and Carlson's counsel agreed. Abbgy, however, stated that she did not know the change of custody hearing was scheduled for this date, and thought that the contempt issue was the only issue to be addressed. Abbgy requested an adjournment in order to obtain new counsel. The trial court asked Abbgy if she had retained her attorney, and she responded that she had not given him any money. The trial court denied Abbgy's motion to adjourn the hearing, explaining:

> Regarding the custody, that -- that motion has been for some time. Children -- children need answers. The guardian ad litem is indicating it's in the best interest of this child to have a determination made, and this Court is concerned that another adjournment would prolong this much, much, much too long. I indicated that at the last hearing that -- that I was concerned about obtaining the next Court date, and I made it real clear at the last hearing that the Court's docket -- how far out it is. Well, in fact, that was March, and we ended up in June and then now putting it over to August. I just cannot take an issue that is as important as this, a custody issue, and have this case postponed once again. And so, I think it is imperative that we proceed, and we will proceed today on the contempt proceedings and the custody proceedings.

After the hearing, the trial court entered an order granting physical custody to Carlson. The following day, the trial court found Abbgy in contempt and ordered that she be sentenced to the Kent County Correctional Facility for 20 days, with 18 days suspended.

III. Request For Continuance In Custody Matter

A. Standard Of Review

We review a trial court's decision on a motion for a continuance in a civil proceeding for an abuse of discretion.[2]

B. MCR 2.503

Abbgy contends that trial court erred in denying her request for a continuance of the custody hearing. We disagree. Under MCR 2.503, a trial court may grant a motion for an adjournment "to promote the cause of justice," but the motion "must be based on good cause."[3] Generally, the trial court does not abuse its discretion by denying a motion for an adjournment

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[2] *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993).

[3] *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991) (citing MCR 2.503).

where past continuances have been granted, where the movant fails to exercise due diligence, and where there is a lack of injustice to the movant.[4]

Abbgy argues that "this Court has reversed as abuse of discretion refusals by trial courts to grant continuances in the precise context of inability by a party to obtain subsequent counsel to represent his/her interests at pending proceedings." For support, Abbgy relies on *Zerillo v Dyksterhouse*[5] and *Bye v Ferguson*.[6] However, these cases are distinguishable from the case at bar.

In *Zerillo*, the trial was originally scheduled for November 7, 1989.[7] On October 31, 1989, the trial judge sua sponte disqualified himself because of his familiarity with the defendants.[8] The matter was rescheduled for December 19, 1989 before a different judge.[9] The plaintiffs' attorney moved to adjourn the trial because he already had two child custody cases scheduled for that day.[10] The trial court denied the plaintiffs' motion, reasoning that the plaintiffs had adequate time to obtain substitute counsel.[11] The plaintiffs renewed their motion, and the trial court again denied it.[12] The plaintiffs appeared on the date set for trial, with another written motion for an adjournment.[13] The trial court again denied their motion.[14] The trial court entered orders dismissing the plaintiffs' complaint with prejudice and granting a default judgment to the defendants on the countercomplaint.[15] This Court reversed the orders, concluding, that given the facts of the case, including the circumstances under which the adjournments were requested, the absence of any prior requests for an adjournment, and the harsh result, the trial court abused its discretion in failing to adjourn the trial.[16]

In *Bye*, the case went to trial on May 2, 1983 after the trial court had rescheduled it twice.[17] On the day of trial, defense counsel informed the court that his client was not able to

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[4] *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992).

[5] *Zerillo*, *supra*.

[6] *Bye v Ferguson*, 138 Mich App 196; 360 NW2d 175 (1984).

[7] *Zerillo*, *supra* at 229.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 229-230.

[13] *Id.* at 230.

[14] *Id.*

[15] *Id.* at 229.

[16] *Id.* at 230.

[17] *Bye*, *supra* at 199.

appear despite having been repeatedly notified of the trial date, and also noted that his client had not paid his legal bills.[18] The trial court granted defense counsel's request to withdraw from representation.[19] The trial court then allowed the plaintiff to present his proofs, after which the trial court entered a judgment for the plaintiff in the amount of $14,077.72.[20] The defendant retained new counsel and filed a motion to set aside the judgment, but the trial court denied the motion.[21] On appeal, this Court concluded that the trial court erred in proceeding immediately to trial, stating:

> Withdrawal of counsel does not give a litigant an absolute right to a continuance; the decision to grant a continuance rests in the sound discretion of the trial court. However, in this case, the defendant should have been given notice of withdrawal and given an opportunity to obtain new counsel.[22]

In contrast, the custody dispute here had been pending before the trial court for several months, and hearings were rescheduled on numerous occasions. Furthermore, evidence indicates that Abbgy had notice of her attorney's intention to withdraw in January. The July 8, 2003 stipulation allowing withdrawal of Abbgy's counsel was actually signed by Abbgy on January 21, 2003. Even assuming that Abbgy did not receive notice of counsel's withdrawal until the date the order was entered, Abbgy still had the opportunity to obtain new counsel before the August 18, 2003 hearing.

"An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion."[23] As noted, Abbgy had time to obtain counsel but failed to do so, thus failing to satisfy the requirement that she act with reasonable diligence.[24] More importantly, the trial court explained that granting the adjournment would not promote the cause of justice because it was in the child's interest to not to further prolong the custody determination. We therefore conclude that the trial court did not abuse its discretion in denying Abbgy's request to adjourn the custody hearing.

Abbgy's appellate brief also presents the related question: "Did the circuit court err reversibly in requiring defendant to simultaneously defend against a custody change petition and a criminal contempt petition, all without the benefit of counsel?" As presented, this question arguably encompasses two separate issues: first, whether the trial court erred in combining the

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[18] *Id*. at 199-200.

[19] *Id.* at 200.

[20] *Id.*

[21] *Id*. at 200, 202.

[22] *Id.* at 207-208.

[23] *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000) (citations omitted).

[24] See *Tisbury*, *supra* at 20.

custody and contempt cases; and second, whether the trial court erred in requiring Abbgy to defend against the criminal contempt charge without counsel.

We decline to address these issues. First, apart from the fact that Abbgy presents no legal argument on this point,[25] Abbgy agreed on the record at the March 3, 2003 hearing to combine the custody and contempt hearings, and she cannot now claim that the trial court erred in doing so.[26] Second, Abbgy did not appeal the criminal contempt order, and she does not request any relief on appeal in relation to the contempt case. Accordingly, to the extent the question encompasses the propriety of the contempt proceedings, it is not properly before us.

IV. Documentary Evidence At Custody Hearing

A. Standard Of Review

We review the trial court's decision to admit or exclude evidence for an abuse of discretion.[27]

B. Necessity Of Laying A Foundation

Abbgy contends that the trial court erred in refusing to allow her to present documentary evidence at the custody hearing. Abbgy tried to admit evidence during her closing argument, but the trial court refused to receive it. MRE 101 provides that the rules of evidence govern proceedings in the courts. The purpose behind these rules is to "secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."[28] MRE 1101 provides that with certain exceptions not here applicable, the rules of evidence "apply to all actions and proceedings in the courts of this state." Nothing in the rules indicates that they are inapplicable to pro se litigants.

It is apparent that Abbgy failed to comply with the evidentiary rules for presenting documentary evidence. Abbgy attempted to introduce various writings, such as the child's report card and medical documents, during her closing statement. A litigant authenticates or identifies evidence as a condition precedent to its admission when testimony of a witness with knowledge is sufficient to support a finding that the matter in question is what its proponent claims.[29] In this case, Abbgy did not call the child's teacher or doctor as witnesses in order to lay a foundation for this evidence. Thus, Abbgy failed to comply with the rules of evidence.

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[25] See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

[26] See *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989).

[27] See *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998).

[28] MRE 102.

[29] MRE 901.

Abbgy contends that while it is necessary and appropriate to hold a "pro per" litigant to the same substantive requirement as a litigant represented by an attorney, it is also fully appropriate for the court, in the interest of justice, to allow adequate procedural leeway in order to guarantee that the best interests of the child are served. Abbgy has provided no authority for such a proposition. A party may not leave it to this Court to search for authority to sustain its position.[30]

We conclude that the trial court's decision to hold Abbgy to the same standard as an attorney for presenting documentary evidence is not so grossly violative of fact and logic that it evidences an exercise of passion or bias. Thus, the trial court did not abuse its discretion in denying Abbgy's request to admit the evidence during her closing statement.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette

[30] *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987).